IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.2323 of 1981
Date of Decision : 18.07.2007

Sheo Dan and another .....Appellants

versus

Har Gian and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.V.K.Jain, Senior Advocate with
Mr.Amanpriya Jain, Advocate for the appellants.

Mr.H.N.Mehtani, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (Oral)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for redemption of mortgage dated 9.6.1951 in respect of the land measuring 16 bighas 19 biswas, was allowed by the Courts below.

One Raghbir Singh mortgaged the land measuring 78 bighas 17 biswas on 9.6.1951 in favour of Ghansham and Sheodan vide registered mortgage deed for a consideration of Rs.4,000/-. The terms and conditions of the mortgage include that the mortgagor could exercise its right of redemption in part in as much as he could redeem part of the land from the mortgagees severally. Raghbir Singh mortgagor sold the land measuring 16 bighas 19 biswas out of the mortgaged land alongwith some other land to the plaintiff Nos.1 to 8 and one Ajmer Singh father of plaintiff Nos.9 to 12, in the sum of Rs.40,000/- through a registered sale deed dated 2.7.1969.

The plaintiffs sought redemption of the land purchased by them on payment of proportionate mortgage amount of Rs.861.56 paise. The said suit has been decreed by both the Courts below relying upon the terms and conditions in the mortgage deed to the effect that the land can be redeemed in part as well. The learned First Appellate Court has relied upon the judgment of this Court reported as ***"Gurditta Singh and another versus Harbans Singh, 1974 P.L.J.-325",*** to hold that non filing of the suit under Section 12 of the Redemption of Mortgage (Punjab) Act, 1913 within one year of passing the order by the Collector, is not fatal to the maintainability of the suit for redemption under the common/general law.

Learned counsel for the appellants has raised two fold arguments before this Court. Firstly, that earlier the plaintiffs have sought redemption by filing an application under the Redemption of Mortgage (Punjab) Act, 1913. The said application was dismissed by the Collector on 8.10.1970, whereas the suit of redemption was filed on 24.11.1978. It is contended that the limitation to challenge the order passed by the Collector is one year under Article 100 of the Limitation Act, 1963. Therefore, the suit filed in the year 1978 is beyond the period of limitation. Secondly, the learned counsel for the appellants argued that in the sale deed dated 2.7.1969, the vendor has not disclosed the factum of mortgage and therefore, the vendee cannot seek redemption of the land mortgaged prior to sale in favour of the plaintiffs.

Learned counsel for the appellants has referred to the judgments reported as ***"Pritam Kaur versus Sher Singh, 1983 P.L.J.-442"*** and ***"1988 (2) Recent Revenue Reports-260"***, to contend that the suit is beyond the period of limitation as the suit has been filed after the expiry of

one year of the order passed by the Collector. The said judgments provide little assistance to the arguments raised by learned counsel for the appellant for the reasons that in the aforesaid cases, the suit for redemption before the Civil Court was filed after the expiry of the period of limitation fixed under the common law as well. As a matter of fact, the Collector in its order dated 8.10.1970, Exhibit D-1 has dismissed the application holding that Raghbir Singh is not entitled to partial redemption, but it was observed that Raghbir Singh can seek his remedy by filing a redemption suit in the Civil Court. The question whether in such circumstance, the suit for redemption before the Civil Court would be maintainable or not, was considered by the Hon'ble Supreme Court of India in case "***Sheolal and others versus Sultan and others, AIR 1971-S.C.93".*** In the aforesaid case, the Collector has dismissed the application for redemption on the ground that complicated questions of fact and law are raised which cannot be tried in summary proceedings. It was held to the following effect:-

> "xx xx xx xx
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> An order relegating the mortgagor to a civil suit for obtaining an order of redemption even if it becomes final does not bar a suit for redemption, for it raises no cloud on the title of the mortgagor arising out of the mortgage. Such an order is not one which is required to be set aside. An order required to be set aside is one which the officer making it has jurisdiction to make it and has the effect of barring the claim for relief unless it is set aside. The order of the Assistant Collector merely declared the rights of the plaintiff under the common law; it did not bar the claim to relief for

redemption in a civil suit, and on that account, it was not an order which was required to be set aside.

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The aforesaid judgment in fact considers the Full Bench judgment in case "***Tulsi Das versus Diala Ram, AIR 1943-Lahore-176"*** and the judgment of this Court reported as "***Dewan Chand versus Raghbir Singh, AIR 1965 Punjab-502".*** Subsequently, the Division Bench of this Court in ***"Gurditta Singh and another versus Harbans Singh, 1974 P.L.J.-325"*** held to the following effect:-

"xx xx xx xx

The non-filing of the suits under Section 12 of the Act within one year of the date of the Collector's order is not fatal to the maintainability of the suits of the appellants for possession of the land by redemption under the general law. The remedy provided by the Act is a summary remedy in addition to the ordinary remedy and not in substitution thereof. It cannot, therefore, be held that if a mortgagor does not avail of that remedy or if his petition is dismissed without holding that his right to redeem had got extinguished, he is debarred from filing a suit for redemption of the land in the Civil Court within the period of limitation provided under the Limitation Act. It is only if the Collector holds that the mortgage does not subsist and the mortgagor has no right to redeem it, that he will be debarred from filing any suit other than a suit to set aside that order of the Collector under Section 12 of the Act, which has to be filed within one year of the date of the order. Such was the case in Kaura and another versus Ram Chand and another, AIR 1925-Lahore-325, on which great reliance has been placed

by the learned counsel for the respondents but the ratio of which cannot be applied to the facts of these appeals.

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The aforesaid Division Bench judgment came up for consideration before the Hon'ble Supreme Court of India in case ***"Harbans Singh and another versus Guranditta Singh and another, 1991 (2) S.C.C.-523",*** wherein while dismissing the appeal, the Hon'ble Supreme Court held to the following effect:-

"xx xx xx xx

7. Once a mortgage always a mortgage and gets extinguished by payment of mortgage money by the mortgagor or decree of redemption is passed and satisfied. The creation of mortgage is an act inter vivos and not a satisfactory or common law right. The Act accords summary remedy and the default of compliance with entails dismissal of the application and Section 13 prohibits second application for the selfsame relief. The remedy of civil suit for redemption available at common law, subject to limitation, is not taken away. Civil Suit is not a declaratory suit, but one to redeem the mortgage and to recover possession of mortgaged property.

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9. We hold that applying the principle of justice, equity and good conscience though Section 60 of the Transfer of Property Act per se did not apply, the principles in Section 60 would apply. Though the application for redemption was dismissed under Section 11 of the Act and became conclusive under Section 12 the mortgagor's right to redemption is not

> barred. A suit for redemption under Section 60 of Transfer of Property Act will be maintainable and civil court has jurisdiction to grant the decree of redemption."

The argument that in the sale deed dated 2.7.1969, the vendor has not disclosed the factum of mortgage, is hardly material. Admittedly, the land was mortgage vide registered mortgage deed dated 9.6.1951. The mortgagor reserved a right to seek redemption of the land in part. Therefore, all rights including the right of partial redemption stand transferred by registered sale deed in favour of the plaintiffs. Thus, the plaintiffs were competent to seek redemption of the land measuring 16 bighas 19 biswas purchased by them on 2.7.1969.

In view of the above, I do not find that the findings recorded by the Courts below suffer from any patent illegality or irregularity which may give rise to any substantial question of law in second appeal.

The present appeal, thus, stands dismissed with no order as to costs.

18-07-2007 (HEMANT GUPTA)
*mohinder JUDGE